ROBERT W. DAVID

IBLA 78-242 Decided May 26, 1978

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting oil and gas lease offer N-16646.

Reversed and remanded.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Six-mile Square Rule -- Oil and Gas Leases: Cancellation

An oil and gas offer describing land which cannot be encompassed within a 6-mile square is defective and must be rejected, and where a lease is issued for part of the land embraced in the offer it must be canceled as to that land which is embraced in a proper offer filed prior to the issuance of the lease in order that the statutory preference right of the party first making a proper offer may be honored.

APPEARANCES: Maurice T. Reidy, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Robert W. David appeals from a decision dated January 17, 1978, by the Nevada State Office, Bureau of Land Management (BLM), which rejected his noncompetitive oil and gas lease offer N-16646 stating the lands embraced therein were included in an offer having a higher priority which had become an issued lease.

Appellant's offer to lease the following described lands in White Pine County, Nevada, was filed on or about March 17, 1977:

Township 13 North, Range 66 East, M.D.M.
Section 13: All

Township 14 North, Range 66 East, M.D.M.
Section 27: All
Section 34: All

Covering 1920 acres.

On January 15, 1977, one James W. Hodges had filed an offer (N-16258) to lease the following described lands:

Township 14 North, Range 66 East, M.D.M.
Section 27: All
Section 34: All

Township 13 North, Range 66 East, M.D.M.
Section 35: All
Section 13: All

Covering 2560 acres.

The effective date of the Hodges lease, N-16258, was January 1, 1978.

In his statement of reasons, appellant asserts that the Hodges offer was contrary to 43 CFR 3101.1-1 "in that it covered lands not 'within an area of six miles square or within an area not exceeding six surveyed sections in length or width measured in cardinal directions.'" Appellant contends that the Hodges' offer violated the 6-mile-square rule and therefore afforded no priority. He requests that the Hodges' lease be canceled and that its own offer be processed for lease issuance. 1/

[1] Section 17 of the Mineral Leasing Act, as amended 30 U.S.C. § 226 (1970), provides that land available for leasing shall be leased to the first party making application for the land who is qualified to hold a lease. Implicit in the requirement that the land must be leased to the party first making application therefor who is qualified to hold a lease is that the party, in order to enjoy the advantage of being the first applicant for the land, must comply with the requirements of the Department governing such applications. See Arnold R. Gilbert, 63 I.D. 328 (1956) and authorities there cited.

The regulation cited by appellant, 43 CFR 3101.1-1 provides in part:

1/ The record shows that Hodges was served with appellant's notice of appeal and statement of reasons, but has not responded.

> All lands subject to disposition under the Act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior. When land is within the known geologic structure of a producing oil or gas field prior to the actual issuance of a lease, it may be leased only by competitive bidding and in units of not more than 640 acres to the highest responsible qualified bidder at a royalty of not less than 12 1/2 percent. Leases for not to exceed 2,560 acres, except where the rule of approximation applies, entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width measured in cardinal directions, may be issued for all other land subject to the act to the first qualified offeror at a royalty of 12 1/2 percent.

The Hodges offer was for lands which could not be embraced within a 6-mile square or within an area not exceeding six surveyed sections in length or width, as required by the above regulation, and was for this reason defective and should have been rejected. Mr. Hodges therefore was not the first qualified applicant. Gilbert, supra. If appellant's offer was the first offer filed subsequent to the Hodges offer and if appellant was otherwise qualified to hold a lease, he was entitled to the lease as the first party having properly applied therefor.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case file is remanded with instructions to cancel the Hodges lease and to issue the lease to appellant, all else being regular.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge